

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
: PATRICK STONE, :
: Plaintiff, : 20-CV-1818 (JMF)
: :
: -v- : MEMORANDUM OPINION
: : AND ORDER
: JOSEPH FISHER, :
: Defendant. :
: :
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JESSE M. FURMAN, United States District Judge:

Upon review of the parties' motion papers, see ECF Nos. 74-78, 84-86, Defendant Joseph Fisher's motion for summary judgment is GRANTED, substantially for the reasons set forth in his memoranda of law, *see* ECF No. 77 ("Def.'s Mem"), 86 ("Def.'s Reply"). Among other things, Plaintiff Patrick Stone's claims in this action are plainly barred by the terms of the release that he signed on February 27, 2020, pursuant to which he "release[d] and forever discharge[d]" Fisher "from any and all claims, complaints, contracts, rights, financial interest, demands, debts, damages, injuries, actions, causes of action, and/or rights of action of any nature whatsoever, whether known or unknown, which . . . Stone had, now has or may have against [Fisher] . . . from the beginning of time to and including" the date of execution. ECF No. 76-3, ¶ 7.

Stone provides no basis to conclude otherwise. Instead, his sole argument is that, as a matter of due process, the Court "may not grant" the motion because, in light of "a constitutionally infirm gag order" and a protective order issued by an Illinois family court, he cannot raise "any defense to this motion." ECF No. 84 ("Pl.'s Mem."), at 1; *see also* ECF Nos. 84-1 and -2. But that claim borders on frivolous. As relevant here, the Illinois court's orders preclude Stone from disclosing "all matters concerning" his "finances, income, or sources

thereof, property or sources thereof, prior employment, including, without limitation, any agreements pursuant to which they are or may be entitled to payments.” ECF No. 84-1, at 1. Nothing in the orders precludes Stone from addressing the legal effects of the release that he signed, which requires consideration of no more than the release itself and Stone’s Complaint in this action. Moreover, Stone’s contention that he is hamstrung by the Illinois court’s orders is hard to take seriously given that he was able to, and did, file the Complaint in this case, not to mention a motion to proceed *in forma pauperis*. *See* ECF No. 19. And finally, to the extent that Stone felt he was not able to present material facts in opposition to Fisher’s motion, Rule 56 of the Federal Rules of Civil Procedure provides the sole potential way out: He could have filed an affidavit or declaration “show[ing] . . . for specified reasons” that he “cannot present facts essential to justify its opposition.” Fed. R. Civ. P. 56(d). He failed to do so.

Accordingly, Fisher’s motion for summary judgment must be and is GRANTED, and Stone’s Complaint is dismissed. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Memorandum Opinion and Order would not be taken in good faith, and *in forma pauperis* status is thus denied. *See Copperedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to terminate ECF No. 74 and close this case.

SO ORDERED.

Dated: September 2, 2021
New York, New York



JESSE M. FURMAN
United States District Judge